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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 10/756,568 | 01/13/2004 | Seiki Ogura | HALO99-006BB | 3526 |
| 7590 05/23/2005 | | | EXAMINER | |
| George O. Saile 28 Davis Avenue Poughkeepsie, NY 12603 | | | LE, THONG QUOC | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 2827 | |

DATE MAILED: 05/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/756,568

Applicant(s)

OGURA ET AL.

Examiner

Thong Q. Le

Art Unit

2827

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-86 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 81-83 is/are allowed.
- 6) ☒ Claim(s) 1-80 and 84-86 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 02/19/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

1. Pre-amendment filed on 06/23/2004 has been entered.
2. Claims 1-86 are presented for examination.

Information Disclosure Statement

3. This office acknowledges receipt of the following items from the Applicant:
Information Disclosure Statement (IDS) filed on 02/29/2004.
4. Information disclosed and list on PTO 1449 was considered.

Specification

5. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

Abstract

The abstract of the disclosure does not commence on a separate sheet in accordance with 37 CFR 1.52(b)(4). **A new abstract of the disclosure is required and must be presented on a separate sheet, apart from any other text.**

Claim Objections

6. Claim 43 is objected to because of the following informalities:
Regarding claim 43, the claim is duplicated with claim 42.

7. Appropriate correction is required.

Double Patenting

8. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

9. Claims 66-69, 70-73, 74-75, 76, 77, 78-80, 84-86 are rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 4-7, 12-15, 8, 16-17, 18, 9-11, 1-2 of prior U.S. Patent No. 6, 686,632. This is a double patenting rejection.

10. Claims 1-65 are rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1-64 of prior U.S. Patent No. 6, 248,633. This is a double patenting rejection.

Allowable Subject Matter

11. Claims 81-83 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 81-83 include allowable subject matter since the prior art made of record and considered pertinent to the applicant's disclosure does not teach or suggest the claimed limitations. Ebina et al. (U.S. Patent No. 6,709,922), and others, does not teach the claimed invention having a method of reading, programming, erasing of a MONOS memory cell as claims 81-83 disclose.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thong Q. Le whose telephone number is 571-272-1783. The examiner can normally be reached on 8:00am-5:00pm M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hoai V. Ho can be reached on 571-272-1777. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Thong Q. Le
Primary Examiner
Art Unit 2827

THONG LE
PRIMARY EXAMINER